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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Modification of Section 90.267(b)  
and Other Provisions of the FCC's  
Regulations Affecting the Ownership  
of Specialized Mobile Radio (SMR)  
Systems Within 40 Miles of Each Other

RM-8030

To: The Commission

COMMENTS  
OF  
THE NATIONAL ASSOCIATION OF  
BUSINESS AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), through counsel and pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. §1.405, hereby respectfully submits its Comments in response to the Petition for Rule Making filed by A & B Electronics, Inc. ("A&B") in the above-referenced proceeding.<sup>1</sup>

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of manufacturers, vendors and service providers as well as large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses. NABER has five membership sections representing Users, Private Carrier Paging licensees, Radio Dealers, Technicians and

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<sup>1</sup>Report No. 1899 (July 13, 1992).

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Specialized Mobile Radio operators. NABER comprises over 6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

For the past 19 years, NABER has been the recognized frequency coordinator in the 450-470 MHz and 470-512 MHz bands for the Business Radio Service. NABER is also the Commission's recognized frequency coordinator for the 800 MHz and 900 MHz Business Pools, 800 MHz "old" conventional channels for Business eligibles and conventional SMR Systems, and for the 929 MHz paging frequencies. In its Report and Order in PR Docket No. 83-737, the Commission designated NABER as the frequency coordinator for all Business Radio Service frequencies below 450 MHz and, in a joint effort with the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), the Special Emergency Radio Service frequencies.

In this proceeding, A & B Electronics has requested that the Commission modify Section 90.267(b) of the Commission's Rules (the "40 Mile Rule") to provide that the 40 Mile Rule would not apply to systems which are: (1) beyond their initial five (5) year license term; (2) designated as a "system license"; or (3) considered to be "aggregately loaded".

## II. COMMENTS

As stated in NABER's Comments in RM-7985 ("Innovator Blocks") SMR Operators in the largest urban areas have a significant incentive to convert their systems to higher technology because most systems lack sufficient capacity for additional expansion.

Through recognition of "aggregate loading" the Commission has granted construction waivers and permitted frequency reuse systems for Fleet Call, Advanced Communications of Florida and Mobile Radio New England. Waiver requests filed by CenCall and Industrial Electric are currently pending at the Commission. It is likely that additional requests will be filed in the near future.

However, there are urban areas where all of the SMR spectrum has been assigned and/or where existing operators do not have sufficient loading to achieve aggregate loading. Such operators have constructed wide-area systems and serve a significant customer base. In such areas, it will be difficult to change over to high technology systems because the systems do not meet an aggregate loading test. Thus, there is a danger of creating a user environment where digital, wide-area systems are in place in large metropolitan areas and smaller urban areas (if the Commission should adopt Fleet Call's Innovator Block proposal), with no digital systems in medium-sized markets.

In order to correct this anomaly, NABER suggested in its Comments in RM-7985 that the Commission amend the 40 Mile Rule. As the overwhelming majority of trunked SMR spectrum in the major urban areas has now been licensed, placed under management agreement where necessary, and constructed, it would appear that the 40 mile rule is no longer necessary. Therefore, NABER suggested that the 40 mile rule be changed from a "loading" rule to a "construction" rule. In other words, a licensee would be prohibited from acquiring a license for a trunked SMR system when

it already has a license for a trunked SMR system within 40 miles which is not constructed. The construction rule should prevent most spectrum hoarding, as a licensee will need to continue to construct systems (at a substantial expense) in order to acquire additional spectrum. However, changing the rule to one of construction and not loading will permit operators of wide-area systems to convert their systems in an orderly manner to a higher technology system.<sup>2</sup>

The rule changed proposed by A&B is somewhat different than NABER's proposed rule change, however the intent of both proposals is similar. Therefore, NABER supports the adoption of a Notice of Proposed Rule Making which would seek to revamp the 40 Mile Rule.

A&B's proposal to limit the relaxation of the 40 Mile Rule only to systems which are beyond their initial five (5) year licensed period would severely limit the ability of operators in secondary markets to construct wide area systems. Many SMR Systems in secondary markets are in their initial licensing period, and new channels acquired to "build-out" a system would be within the initial licensing period. There is little need to delay the construction of wide area systems in such areas. The rule revision proposed by NABER (with construction as a prerequisite to 40 Mile Rule relief) would encourage the full development of wide-area networks and would limit the ability to hoard spectrum.

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<sup>2</sup>NABER continues to believe that the rule continues to serve a vital purpose to prevent warehousing of these channels which have been allocated to the various services and are still available in numerous markets.

NABER believes that any rule change adopted by the Commission should simplify the Commission's Rules. A&B's proposal regarding a "system license" appears to complicate a determination of compliance with the 40 Mile Rule and therefore the proposal complicates the Commission's task of efficiently processing SMR applications. A review of applications to determine whether 20 or more channels have been "accumulated" by an entity within an MSA or RSA, and what this means to loading requirements or co-channel spacing, seems to be contrary to the Commission's goal of easing regulatory burdens. Further, NABER is unclear as to the benefits which would be obtained from the system license. Therefore, NABER would oppose this portion of the proposal. NABER does, however, support the formal recognition in the Commission's rules of aggregate loading and NABER encourages the Commission to include this portion of the proposal in a Notice of Proposed Rule Making.

Finally, NABER opposes A&B's proposal on page 15 of its Petition to permit intercategory sharing for SMR system licenses when there are no available SMR channels in the area. The suggested revision seems to propose that non-SMR Pool channels could be accessed for new trunked SMR systems or to add to SMR systems which are not loaded. A&B has not demonstrated any basis for the proposed relief. The Commission's "Pool" allocation method adopted for 800/900 MHz systems has worked well to date and need not be changed in order to facilitate the expansion of wide-area SMR systems which are not loaded.

**III. CONCLUSION**

**WHEREFORE,** the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION FOR BUSINESS  
AND EDUCATIONAL RADIO, INC.**

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**Date: August 12, 1992**

**CERTIFICATE OF SERVICE**

I, Ruth A. Buchanan, a secretary in the law offices of Meyer, Faller, Weisman & Rosenberg, P.C. hereby certify that I have on this 12th day of August, 1992 sent via first class mail, postage prepaid, a copy of the foregoing "Comments" to the following:

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Ruth A. Buchanan